

Part IV - Items of General Interest

Deadline for Allocating Private Activity Bond State Ceiling Among Issuing Authorities Under Section 146(e)

Notice 2003-41

PURPOSE

This Notice provides guidance to state authorities responsible for allocating private activity bond state ceiling under §146(e) of the Internal Revenue Code (the “Code”). It clarifies that the deadline for allocating any portion of the state ceiling under §146(e) is the earlier of (1) February 15 of the calendar year following the year in which the state ceiling arises, or (2) the date of issue of bonds issued pursuant to an allocation of that portion of the state ceiling. Notice 2003-42 clarifies the deadline under §146 for an issuing authority that has been allocated state ceiling, referred to as the issuing authority’s volume cap, to assign all or any portion of that volume cap to another issuing authority in the state.

BACKGROUND

Under §103(a), except as provided in §103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that §103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of §141). Section 141(e) provides, in part, that a qualified bond must meet the applicable requirements of §146.

Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of §146 if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority’s volume cap for such calendar year.

In general, an issuing authority’s volume cap for a calendar year is the portion of the state ceiling allocated to the issuing authority for that year. Under §146(d)(1), the state ceiling applicable to any state for any calendar year is the greater of (1) an amount equal to \$75 multiplied by the state population, or (2) \$225 million. Beginning in 2003, these amounts are adjusted for inflation in accordance with §146(d)(2).

Generally, §§146(b) and (c) provide formulae for allocating state ceiling among issuing authorities in the state authorized to issue tax-exempt private activity bonds. However, §146(e)(1) provides that, except as provided in §146(e)(3) (relating to volume cap of constitutional home rule cities), a state may, by law, provide a different allocation formula for allocating the state ceiling among the governmental units (or other authorities) in such state having authority to issue tax-exempt private activity bonds.

Section 146(f)(1) provides that if an issuing authority’s volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued by the authority during such calendar year, such issuing authority may elect to treat all (or any portion) of such excess as a carryforward for one or more carryforward purposes described in §146(f)(5). Section 146(f)(4) provides that any carryforward election (and any identification or specification contained therein), once made, shall be irrevocable.

Temporary Income Tax Regulations §1.103(n)-4T, A-2, generally provides that an election to carry forward volume cap must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused volume cap. These regulations, which were issued under the predecessor to §146, generally continue to apply to the extent they are not inconsistent with the Tax Reform Act of 1986. See Conf. Rep. 99-841 at II-686, 1986-3 (Vol. 4) C.B. 686. However, Notice 89-12, 1989-1 C.B. 633, which may be relied upon, provides that regulations to be issued under §146 will require that the issuing authority file the carryforward election by the earlier of (1) February 15 of the calendar

year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

DISCUSSION

Neither the Code nor the regulations specifically provide a due date for making allocations of state ceiling under §146(e). In Notice 89-12, the Service extended the time to file a carryforward election to accommodate difficulties issuers may experience in determining the amount of unused volume cap and filing the election by the end of the calendar year. To coordinate the deadline for allocating state ceiling and the deadline for making a carryforward election, the deadline for allocating any portion of the state ceiling under §146(e) is the earlier of (1) February 15 of the calendar year following the year in which the state ceiling arises, or (2) the date of issue of bonds issued pursuant to an allocation of that portion of the state ceiling.

EFFECTIVE DATE

This Notice applies to allocations of state ceiling arising after 2002.

DRAFTING INFORMATION

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